

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DAVIS SIMS,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION H-05-2783
	§	
DOUG DRETKE,	§	
Respondent.	§	

**ORDER OF DISMISSAL**

Petitioner, Davis Sims, filed a *pro se* Motion for Extension of Time to File § 2254 Federal Writ of Habeas Corpus [Docket Entry No. 1]. Petitioner is incarcerated in state prison. For the reasons stated below, this Court DENIES the motion.

Petitioner intends to challenge a conviction in cause number 629,255, which underlies a state application for a writ of habeas corpus he filed in the Texas Court of Criminal Appeals under their cause number WR-62,455-01. Petitioner does not state which state court convicted him. However, records of the Texas Court of Criminal Appeals show that writ application no. WR-62,455-01 challenges a conviction in cause number 629,255, in the 262nd District Court of Harris County, Texas.

Petitioner reports that he filed his state writ application on June 23, 2005, and the Texas Court of Criminal Appeals denied it on July 27, 2005. Petitioner requests an additional thirty days to file a federal writ application. Petitioner does not provide

enough information to determine whether the federal statute of limitations under 28 U.S.C. § 2244 has already expired, and if not, on what date it will expire.

An extension of time at this stage is premature and inappropriate. Whether the statute of limitations ultimately bars Petitioner's federal writ application will be decided by this Court when it decides the federal application itself. When Petitioner files his federal application, at that point, it will be timely or late. The statute of limitations question—including whether Petitioner is entitled to equitable tolling—will be decided then with all of the necessary information.

Petitioner's Motion for an Extension of Time to File a Petition for a Writ of Habeas Corpus Relief [Docket Entry No. 1] is DENIED. **Petitioner should file his federal habeas petition as soon as possible.**

SIGNED at Houston, Texas, on this 23<sup>rd</sup> day of August, 2005.



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DAVID HITTNER

United States District Judge